

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS –  
HOUSTON DIVISION

MARION FAWN CREIGHTON	§	CIVIL ACTION NO. _____
Individually and Derivatively on behalf of	§	
(1) VIP MED SURG VENTURES, LLC	§	
(2) VIP SURG ASC, LLC, and	§	
(3) 3083 IMAGING, LLC	§	
	§	
V.	§	
	§	
COOPER COLLINS, VIP MED SURG	§	
VENTURES, LLC, VIP SURG ASC, LLC	§	
and 3083 IMAGING, LLC	§	

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**DEFENDANT COOPER COLLINS' NOTICE OF REMOVAL**

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COMES NOW, Defendant, Cooper Collins ("Collins"), and files this notice of removal under 28 U.S.C. §1446(a).

**I. Removal Jurisdiction**

1. On March 19, 2019, Cooper Collins, Brandon Belanger and CSB Contractors, Inc. sued Marion Fawn Creighton ("Creighton") for (1) common law fraud; (2) statutory fraud; (3) fraud by non-disclosure; (4) defamation; (5) tortious interference with existing contracts; (6) tortious interference with prospective business relations; (7) breach of contract; (8) breach of fiduciary duty; (9) theft under the Texas Theft Liability Act; and (10) money had and received, under Cause Number 19-03-03975, which is currently pending in the 284<sup>th</sup> Judicial District Court of Montgomery County, Texas (the "First Lawsuit").

2. Subsequently, on April 1, 2019, Creighton, Individually and Derivatively on behalf of (1) VIP Med Surg Ventures, LLC ("MSV"), (2) VIP Surg ASC, LLC ("ASC"), and (3) 3083 Imaging, LLC ("3083 Imaging") sued Cooper Collins, MSV, ASC, 3083 Imaging, Julie McKay-

Smith and Phillip Wills under Cause Number 19-04-04618 filed in the 284<sup>th</sup> Judicial District Court of Montgomery County, Texas (the “Second Lawsuit”). Creighton’s Original Petition in the Second Lawsuit included a Request for Ex Parte Temporary Restraining Order and Temporary Injunction (“Creighton Petition”).

3. Creighton’s Petition includes claims against Collins under federal law. More specifically, she alleges Collins “violated state **and federal wage and hour laws (requiring payment for an employee’s work)** and MSV’s Company Agreement (which denied Mr. Collins the right to make any decisions in MSV’s business).” Creighton Petition, p. 8, ¶ 31 (emphasis added).

4. Though not identified by title in Creighton’s Petition, the “federal wage and hour laws” she references in her alleged claim for unpaid wages is the **federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201**, *et seq.* (the “FLSA”). (Texas does not have any separate “state” wage and hour law, as erroneously alleged in Creighton’s Petition.) The federal courts have subject matter jurisdiction over federal FLSA claims pursuant to 29 U.S.C. section 216(b).

5. Creighton further alleges that Mr. Collins compelled the other three Members of CSB Contractors, Inc. (a construction company in which he holds an ownership interest) to construct a medical building that “failed to comply with [unidentified] **federal** requirements for an ASC [ambulatory surgery center].” Creighton’s Petition, p. 4, ¶ 15 (emphasis added).

6. On April 15, 2019, the parties entered into an agreement, pursuant to Texas Rule of Civil Procedure 11, to, among other things, file an Agreed Order to Consolidate the Second Lawsuit into the First Lawsuit (as the earlier filed case), which Agreed Order to Consolidate was filed by the parties on April 15, 2019.

7. Collins was served with notice of the Second Lawsuit on Wednesday, April 3, 2019, when Creighton's counsel emailed his counsel a copy of Creighton's Petition and the Temporary Restraining Order she had obtained *ex parte* (which TRO was subsequently dissolved by agreement of the parties on April 15).

8. Collins, therefore, files this Notice of Removal within thirty (30) days of his having received notice of Creighton's Petition containing claims alleged under federal law. 28 U.S.C. §1446(b)(3) ("Except as provided in subsection (c), the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable."); *see Mumfrey v. CVS Pharm., Inc.*, 719 F.3d 392, 397-98 (5th Cir. 2013).

9. To his knowledge, the only other Defendant to Creighton's Petition who has been served is Julie McKay-Smart, and she is not a party to Creighton's federal claims.

10. Removal is proper because Creighton's suit involves (at least one) federal-question claim; to wit, her claim against Collins for unpaid wages under the federal FLSA. *See* 28 U.S.C. §§ 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."), 1441(a), (c).

11. All defendants who have been properly joined and served, and who are parties to Creighton's federal claim (i.e., only Collins), have joined in or consent to the removal of this case to federal court. 28 U.S.C. §1446(b)(2)(A); 28 U.S.C. §1446 (c)(2).

12. The Court should exercise supplemental jurisdiction under 28 U.S.C. § 1367 over the balance of Creighton's claims and over Collins, Belanger's and CSB Contractor's state-law claims asserted in the First Lawsuit, because the claims are so related to the claims within the

Court's original jurisdiction that they form part of the same case or controversy under Article 3 of the U.S. Constitution. All of the claims in this action are related to Creighton's role as Manager of MSV, ASC and 3083 Imaging, for which she seeks unpaid wages under the federal FLSA.

13. Copies of all pleadings, executed process, orders and other filings in the state court suits are attached to this Notice as required by 28 U.S.C. §1446(a); Local Rule 81.

14. Counsel of record for Creighton is:

Joe Michels  
Ky Jurgensen  
The Michels Law Firm  
250 Ed English Drive, Bldg 3, Suite A  
The Woodlands, Texas 77385  
Joe.michels@michelsfirm.com  
Ky.jurgensen@michelsfirm.com  
Tel: 281-210-1595  
Fax: 281-823-7484

15. Venue is proper in this district under 28 U.S.C. § 1441(a) because the state court where the suit has been pending is located in this district.

16. Collins will promptly file a copy of this notice of removal with the clerk of the state court where the suit is pending. 28 U.S.C. § 1446(d).

## **II. Jury Demand**

17. Both Creighton and Collins demanded a jury in the state court action.

## **III. Prayer**

For these reasons, Collins asks the Court to remove the suit to District Court for the Southern District of Texas.

Respectfully submitted,

**THE STRONG FIRM, P.C.**

*/s/ April L. Walter*

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**APRIL L. WALTER**

Of Counsel

Texas State Bar No. 24052793

awalter@thefirm.com

Southern District of Texas Bar No. 713287

**KRISTEN BATES**

Texas State Bar No. 24073881

kbates@thefirm.com

Southern District of Texas Bar No. 1139299

1790 Hughes Landing Blvd., Suite 200

The Woodlands, Texas 77380

Phone: 281.367.1222

Fax: 281.210.1361

**ATTORNEYS FOR DEFENDANT,  
COOPER COLLINS**

**CERTIFICATE OF SERVICE**

I certify that on this the 3rd day of May, 2019, a true and correct copy of the foregoing was served upon the following counsel of record in accordance with the Texas Rules of Civil Procedure:

Joe Michels  
Ky Jurgensen  
The Michels Law Firm  
250 Ed English Drive, Bldg 3, Suite A  
The Woodlands, Texas 77385  
Joe.michels@michelsfirm.com  
Ky.jurgensen@michelsfirm.com

Julie McKay-Smart  
14838 Lake Mount Pleasant Road,  
Montgomery, Texas 77356

*/s/ April L. Walter*

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**April L. Walter**

<b><u>INDEX OF STATE COURT FILINGS (PER LOCAL RULE 81)</u></b>		
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1.	Marion Fawn Creighton's Original Petition Request for Ex Parte Temporary Restraining Order and Temporary Injunction (April 1, 2019)	19-04-04618
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3.	Request for Service MSV (April 1, 2019)	19-04-04618
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9.	Temporary Restraining Order (April 3, 2019)	19-04-04618
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21.	Plaintiffs' Original Petition, Jury Demand and Requests for Disclosures (March 19, 2019)	19-03-03975
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26.	Verification of April L. Walter (April 4, 2019)	19-03-03975
27.	Notice of Submission of Motion to Consolidate Cases (April 5, 2019)	19-03-03975
28.	Plaintiff Cooper Collins and Brandon Belanger's Motion for Ex Parte Temporary Restraining Order and Temporary Injunction (April 9, 2019)	19-03-03975
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32.	Notice of Status Conference (April 26, 2019)	19-03-03975
33.	Creighton's Original Answer (April 30, 2019)	19-03-03975
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